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**Authors**

Hernández, J  
Berrick, JD

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**Kinship probate guardianship: An important permanency option for children**

Julia Hernandez  
Jill Duerr Berrick

Families in Society

### **Abstract**

A growing number of children are being raised by relatives under a variety of different care arrangements. Although the extant literature provides rough estimates of the number and characteristics of children living in most care arrangements, research on kinship probate guardianship is especially scarce. This paper focuses on kinship probate guardianship in an effort to build the literature on this understudied population. It examines demographic information about caregivers and children pursuing kinship probate guardianship, the circumstances that necessitate children's alternative care, and reasons for selecting this custodial arrangement. Findings suggest that children and caregivers who select into kinship probate guardianship have characteristics similar to those of children and caregivers in other types of kinship care. These children move into the homes of their relatives for a variety of reasons primarily including parental desertion, detention, and drug use.

### **Introduction**

A growing number of children are being raised by relatives under a variety of different care arrangements, among them kinship foster care, kinship probate guardianship, kinship adoption, and informal kinship care. The various arrangements offer differing degrees of supports and resources to caregivers and their relative children. Although the extant literature provides rough estimates of the number and characteristics of children living in most kinship care arrangements, research on kinship probate guardianship is especially scarce. To date there is no literature on the incidence of kinship probate guardianship among kin, the characteristics of these children or caregivers, or the circumstances leading children and caregivers to select this arrangement. Under kinship probate guardianship (sometimes referred to simply as "guardianship" or "private guardianship" or "temporary guardianship" in some states), custodial and legal rights pertaining to the child's care are transferred from the parent to the relative caregiver with the consent of a probate (or sometimes family) court. Parental rights are not terminated and a parent can petition the court to ask that the guardianship be reversed. During the guardianship, parents retain some limited rights and responsibilities (e.g., rights to visitation, responsibility for financial support in some cases). The majority of states (though not all) allow for some type of guardianship, though there are differences in the guardianship duration, whether or not the parent must be found "unfit," or whether an older child can voice a preference, etc. In almost all cases, the guardian can apply for TANF-child only grants to help pay for the cost of a child's care, and in most states, additional services or supports are not routinely available (Grandfamilies.org, 2018a).

The present descriptive study seeks to address part of this gap by gathering demographic information about the caregivers and children pursuing legal guardianship through the probate courts in a large county in a

western state, and their reasons for selecting this custodial arrangement. The county is a large child welfare system in the United States, serving over 9,000 children in kinship foster care (Webster et al., 2018). There is reason to believe that the number of children living in informal arrangements with their relatives is much higher still. Examining kinship probate guardianship in this setting allows for access to a large sample that may have relevance to other large, ethnically diverse municipal settings.

### **Kinship Care**

Some estimates indicate that 7.7 million children in the U.S. reside in the home of a relative; of these, more than 2.5 million are cared for by relatives or close family friends with no parent present (Annie E. Casey Foundation, 2018). Relative or kinship care today is particularly common in communities of color with as many as one in five African-American children living in the home of a relative during a portion of their childhood (Annie E. Casey Foundation, 2012).

Kinship care is defined as the “full-time protecting and nurturing of children by grandparents, aunts, uncles, godparents, older siblings, non-related extended family members, and anyone to whom children and parents ascribe a family relationship, or who ‘go for kin’” (Child Welfare League of America, 2013). The majority of kin caregivers are maternal grandparents to children. Compared to the general population of parents, kin caregivers are older, poorer, less well-educated, less likely to be employed, more likely to be single, and more likely to struggle with a significant disabling condition (Macomber, Geen, & Main, 2003; Pew Research Center, 2013). The children in their care tend to be young with children aged six and under representing the largest proportion of children being cared for by a grandparent (Pew Research Center, 2013).

Although the existing literature provides insight into kinship care in general, it is imprecise in differentiating between different care arrangements. Traditionally, kinship care arrangements have been classified as either public or private. Public care includes arrangements in which a government agent, such as a social worker or juvenile or dependency court judge, was involved in the placement (Macomber et al., 2003) while private care includes any arrangements in which government agents were not involved. Although this distinction has been useful in understanding the scope of kinship care and the characteristics of families in each type of care, it does not fully capture the variability in care arrangements currently available to families. Hybrid kinship care situations that are government-facilitated but not fully public in nature are becoming more common. With this increased complexity, there is a need for a more nuanced framework to guide future research.

### **State-Mandated, State-Mediated, and State-Independent Kinship Care**

The authors have proposed a framework in which care arrangements for non-indigenous children are classified according to the level of government involvement (see (Berrick & Hernandez, 2016). Under this

framework, kinship care is articulated more clearly beyond the public/private dichotomy and is instead classified as state mandated, state mediated, or state independent (see Table 1). This framework is applicable across states although there is significant variability between states regarding the financial and service supports offered to caregivers.

[Table 1. Kinship Care Arrangements]

State-mandated kinship care is that in which children are placed in the care of a relative through state intervention. Included in this category are kinship foster care, voluntary placement agreements, kinship dependency guardianship (following a kinship foster care placement), and kinship adoption. Typically, these care arrangements are recommended to the courts by a state agent, such as a social worker, and the courts approve or deny the arrangement and impose mandated responsibilities on the state and on caregivers. Caregivers hold custodial rights and under certain conditions, may retain legal rights. Under kinship adoption, of course, all parental rights are transferred from the birth parents to the adoptive parent(s). We place voluntary placement agreements into the category of state-mandated care because although the name would suggest that the arrangement is voluntary, and there is no court involvement in the case, the agency takes care, custody, and control of the child, and parties typically understand that if the agreement is declined, the state may draw the family into an involuntary care arrangement (A. Schwartz<sup>1</sup>, personal communication, March 14, 2016). State-mandated kinship caregivers are eligible in many states for government services and financial assistance such as foster care subsidies, welfare, guardianship, or adoption payments.

Reliable estimates of the number of children living under any state-mandated kinship care arrangement are not currently available although federal data provide information on the incidence and prevalence of certain types of state-mandated kinship care. Data from the Adoption and Foster Care Analysis Reporting System (AFCARS) indicates that in 2016 an estimated 139,017 children were living in kinship foster care (about 32% of the total foster care population) (Children's Bureau, 2017). In that same year, 23,659 children exited foster care to legal guardianship, although this figure includes both kin and non-kin guardianship (Children's Bureau, 2017). In 2010, about 30% of children adopted from foster care were adopted by relatives (ChildFocus, 2010). There is currently no research on the incidence or prevalence of voluntary placement agreements.

State-independent care, commonly referred to as informal kinship care, includes temporary and permanent care arrangements that occur outside of government purview. Caregivers under these arrangements do not

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<sup>1</sup> Policy Director, Alliance for Children's Rights, Sacramento, CA.

hold custodial or legal rights and have limited access to financial assistance or government services (Golden & Hawkins, 2012). The majority of children living with a relative caregiver, 1.8 million of approximately 2.7 million children (Main, Macomber, & Geen, 2006), do so under a state-independent care arrangement.

State-mediated care arrangements are those that fall in between state-independent and state-mandated. These arrangements typically occur when a state agent facilitates the placement of a child in the care of a relative as in the case of kinship diversion or kinship probate guardianship. In kinship probate guardianship, caregivers can also initiate proceedings without the support or guidance from a state agent. Under these arrangements, caregivers are eligible for limited financial assistance in the form of TANF child-only grants or TANF family grants if the family meets income criteria. Although caregivers who pursue kinship probate guardianship can hold custodial and legal rights, those with children placed in their care through kinship diversion do not. Research on kinship diversion and kinship probate guardianship is remarkably sparse such that estimates of the number of children living under all state-mediated care arrangements are not available. Very rough estimates suggest that anywhere from 135,000 to 400,000 children living with relatives do so under kinship diversion (Annie E. Casey Foundation, 2013; Macomber et al., 2003; Main et al., 2006).

### **Characteristics of Caregivers and Children in Kinship Care**

An ever-expanding literature describes the characteristics of caregivers and children involved in kinship care. Although the literature on state-mandated care arrangements is fairly well developed, information about the other care arrangements is still emerging. The following represents a brief review of what is known about the caregivers and children within each care arrangement. The figures provided rely heavily, though not exclusively, on data from California, as data from this state are more readily available.

**State-mandated care.** In comparison to non-kin foster caregivers, kin foster caregivers are older, have lower educational attainment, have higher rates of single parent households, and have higher levels of poverty (Children's Bureau, 2017; Harden, Clyman, Kriebel, & Lyons, 2004; Zinn, 2010). Almost two-thirds of kinship foster caregivers are grandmothers to their relative children (Children's Bureau, 2017). The children in their care tend to be older than those in non-kin foster care and are equally or less likely to suffer from mental health or behavioral problems such as ADHD, depression, and oppositional defiance disorder (Cuddeback, 2004; Landsverk, Davis, Ganger, Newton, & Johnson, 1996; Leslie et al., 2005; Stein et al., 2014; Wu, White, & Coleman, 2015). Given that kinship foster care is typically a path to kinship adoption, we can assume that the characteristics of caregivers in kinship adoption are similar to those of the kinship foster care population.

Literature on kinship dependency guardianship (as a permanency outcome following foster care) is sparse but data from California, New York,

and Illinois may be instructive. In one study of kin and non-kin guardianship in Illinois, the majority of caregivers were over age 50, were single, and had a high school diploma or less (Testa, Cohen, & Smith, 2003). Data from California and New York suggest that the majority of children in kinship dependency guardianship are over the age of six (Magruder, Webster, & Shlonsky, 2015; New York State Office of Children & Family Services, 2014). The authors were unable to find any literature on the characteristics of children or caregivers who are living together under a voluntary placement agreement arranged by the state.

**State-independent care.** The National Survey of America's Families is the primary source of information on state-independent care. Caregivers living under this type of arrangement tend to be older, have lower incomes, have lower levels of education, and have poorer health outcomes than the general population of parents (Macomber, Geen, & Clark, 2001).

**State-mediated care.** As previously noted, information on kinship probate guardianship and kinship diversion is extremely limited. The best data available about kinship diversion also is from the 1997 National Survey of America's Families, which found that the kinship diversion caregiver population was similar to that of the kinship foster care population (Macomber et al., 2001), that is, older, single, poorer, and less well educated than the general population of parents. There is currently no literature on the characteristics of caregivers and children in kinship probate guardianship, a gap that this paper seeks to address.

### **Kinship Probate Guardianship**

The research presented in this paper focuses on kinship probate guardianship in an effort to begin building the literature on this understudied population. In kinship probate guardianship, which is commonly referred to as legal guardianship, guardians gain legal custody of a child through the probate court. Although non-kin can also seek guardianship through the probate court, for the purposes of this paper we focus exclusively on kin seeking custody of related children.

Probate courts were originally established to manage the distribution of a deceased individual's property and determine custody of orphaned children. The court's authority has expanded over time to include the appointment of guardians for children abandoned to the care of their relatives and children whose parents are not able to care for them (Weisz & McCormick, 2003). Guardians are granted limited legal rights, such as medical and educational rights, and specific duties, such as care and protection, but parents retain their parental rights (Leashore, 1984).

Relatives seeking kinship probate guardianship file a petition for guardianship with the probate court and undergo a home study, albeit one that is often less rigorous than that conducted by family or juvenile courts (Weisz & McCormick, 2003). The Probate Code in the state under study allows for the applicant to undergo a home study; in the county examined for this study, a "home study" is required, though the investigation takes place in the courthouse, rather than in an applicant's home. If the petition is

uncontested and the guardianship deemed appropriate, a judge grants guardianship; if contested by a parent, guardianship may be granted if living with the parent is considered to be detrimental to the child and guardianship is deemed to be in the best interest of the child (Judicial Council of California, 2018). Most often, preserving the child's current living arrangement is assumed to be in the child's best interest (Weisz & McCormick, 2003).

Typically, relatives are responsible for filing and paying for a guardianship petition, a process that can be cumbersome and confusing for caregivers unfamiliar with the court system (K. Boney<sup>2</sup>, personal communication, February 8, 2016). Some jurisdictions and agencies, such as the one with which the authors partnered for the current research, offer legal assistance to caregivers; however, these opportunities vary greatly across the U.S. (Weisz & McCormick, 2003).

Although kinship probate guardianship is similar to kinship dependency guardianship obtained through the juvenile dependency courts in that both grant legal guardianship to kin, there are some important distinctions. Kinship dependency guardianship is initiated by a state agent, typically a child protection services worker following a foster care placement with that caregiver; in contrast, the prospective guardian initiates the kinship probate guardianship process. Relatives who are granted kinship probate guardianship are not provided the additional supports available to relatives pursuing kinship dependency guardianship through the juvenile courts as probate courts lack the authority and resources to mandate or provide such services (Duques, 2005). Additionally, the caregivers who are granted kinship probate guardianship have limited access to public assistance and, in contrast to kinship dependency guardianship, are not eligible for foster care, adoption, or guardianship subsidies (Weisz & McCormick, 2003).

### **Reasons Caregivers Pursue Kinship Probate Guardianship**

Researchers have yet to examine the circumstances that lead relatives to pursue kinship probate guardianship. Anecdotal evidence suggests that some kin who have been caring for children informally seek legal guardianship as a means of securing medical and educational rights (K. Boney, personal communication). In other instances, the arrival of a child may be recent and legal guardianship may be sought for any variety of reasons.

Research on informal kin caregivers indicate a number of reasons that caregivers step in to care for their relative children including parental substance abuse, child maltreatment or abandonment, parental incarceration, precarious housing, financial instability, parental mental or physical illness, or death (Gleeson et al., 2009). Edwards and Ray (2010) have developed a typology to describe these and other circumstances that lead children to move into the homes of their relatives. Their work expands

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<sup>2</sup> Senior Staff Attorney, Legal Assistance for Seniors, Oakland, CA.



upon that of DeToldeo and Brown (DeToldeo & Brown, 1995) (who originally conceptualized four main reasons - divorce, desertion, drugs, and death - children might need substitute care), Edwards and Ray (Edwards & Ray, 2008), and Edwards and Benson (Edwards & Benson, 2010) outline “9 D’s” as follows: *divorce, desertion, drug use, death, disease, delivery, detention, deployment, or departure*. We define and explore each of these reasons briefly to contextualize findings from our own study, though it should be noted that there are no exact figures in the U.S. to suggest the proportion of children who are transferred from their home of origin to the home of a relative for any of the reasons offered by Edwards and Ray (Edwards & Ray, 2010).

Approximately 50% of all first marriages in the U.S. end in *divorce*, with rates increasing for subsequent marriages (Copen, Daniels, Vespa, & Mosher, 2012). Although rates of divorce have stabilized in the U.S. (National Center for Health Statistics, 2015), divorce still impacts a large proportion of children. Estimates indicate that about 9% of U.S. children (5.9 million) live in the home of a divorced parent (Shiono & Quinn, 1994). Divorced parents may experience economic hardship and psychological distress (Amato, 2010), which can lead them to seek assistance from relatives in caring for their children.

In addition to divorce, an estimated 16.3% of all children experience neglect (Stoltenborgh, Bakermans-Kranenburg, & van IJzendoorn, 2013) - what Edwards and Ray (Edwards & Ray, 2010) categorize as *desertion*, due to the notion that parents may have deserted or partially-deserted, by omission or commission, their parental role. The true prevalence of neglect is likely higher given that neglect is underreported or often only reported when present in conjunction with other types of maltreatment (Stoltenborgh et al., 2013), although of course not all child neglect results in a transfer of custody between parents and kin. According to the Fourth National Incidence Study, an estimated 295,300 children experienced physical neglect (meeting the “harm standard” criteria) in 2005-06, translating to about 4 children per 1,000. An additional 193,400 children experienced emotional neglect (2.6 per 1,000) and 360,500 children experienced educational neglect (4.9 per 1,000), also under the “harm standard” (Sedlak et al., 2010). The numbers of children “endangered” by neglect was far higher (Sedlak et al., 2010).

Parental *drug use* can seriously compromise a parent’s regular parenting skills (Arria, Mericle, Meyers, & Winters, 2012) and is also associated with increased risk of child maltreatment (Appleyard, Berlin, Rosanbalm, & Dodge, 2011). The most recent estimates indicate that over 8.3 million children (11.9%) live with at least one parent who is dependent on or abuses alcohol or drugs (Substance Abuse and Mental Health Services Administration, 2009). In some cases, children may be placed in foster care with relatives to protect them from harm (Meyer, McWey, McKendrick, & Henderson, 2010). In many instances, however, children may remain with their parent, or they may be transferred to the home of a relative under informal circumstances.

While *death* may be an unlikely factor precipitating the need for a relative caregiver, an estimated 3.5% of children in the U.S. under the age of 18 experience the death of a parent (Haine, Ayers, Sandler, & Wolchik, 2008).

Parents can be affected by illness that prevents them from caring for their children and that requires the support of kin. Although Edwards and Ray (Edwards & Ray, 2010) refer only to physical illness in their framework, the authors of this paper have expanded the definition of *disease* to include mental illness. Among families with children under the age of 18, up to 23% have or have had at least one parent who suffers from a mental illness (Reupert, J Maybery, & Kowalenko, 2013).

Some children also need to rely on care from kin because their parent is especially young and unable to provide appropriate care. In 2015, approximately 229,715 children were born to mothers aged 15 to 19 in the U.S., representing a birth rate of 22.3 per 1,000 women in this age group (Martin, Hamilton, Osterman, Driscoll, & Matthews, 2017). In Edwards and Ray's (Edwards & Ray, 2010) typology, children's move into the home of a relative due to a teen birth is referred to as *delivery*.

*Detention*, in the Edwards and Ray's (Edwards & Ray, 2010) framework, refers to incarceration of a parent leading to the transfer of a child to a relative. The U.S. is widely recognized as housing a higher percentage of its population in jails and prisons than any other western industrialized country (National Academy of Science, 2014) with approximately 7 per 1000 adults in jails and state and federal prisons (Walmsley, 2016). Of these, an estimated nine percent are women (Walmsley, 2017). Prison sentences vary, but according to some sources in 2017, the average length of a federal sentence was 51 months (U.S. Sentencing Commission, 2018). Many of these inmates have children; approximately 50% of state inmates and 60% of federal inmates have a child under the age of 18 (Maruschak, Glaze, & Mumola, 2010). During their stay in prison, parents may need others to care for their children.

Still, other parents are separated from their children due to military *deployment*. Among active duty members of the armed forces, 43.7% have children aged 18 and under; 5.3% of active duty members with children are single parents and an additional 2.8% are members of two-parent families in which both parents are on active duty (Department of Defense, 2010).

And finally, kin may be called upon to care for children if parents experience *departure* due to immigration-related issues. Edwards and Ray (Edwards & Ray, 2010) use the term to refer to parents who leave children in the care of relatives to seek economic opportunities in other countries. For the purposes of this paper, that definition has been expanded to include cases of immigration detention and deportation. Between 1997 and 2007, over 100,000 children had a parent deported from the United States (Baum, Jones, & Barry, 2010). According to other sources, an additional estimated 500,000 U.S. citizen children were touched by the apprehension, detention, or deportation of a parent between 2011 and 2013 (Capps et al., 2015).

Although the framework of Edwards and Ray (Edwards & Ray, 2010) is helpful, the authors of this paper propose four additions to capture the range of experiences that may trigger a child's transition from his/her birth home to a relative caregiver. These include *diversion*, *destitution*, *danger*, and *desire*.

*Diversion* refers to instances in which a social worker places the child(ren) with relatives and/or instructs relatives to seek guardianship (Malm & Allen, 2016). As one of the state-mediated placement types noted previously, kinship diversion is used in some states as an alternative to foster care (Annie E. Casey Foundation, 2013).

*Destitution* is the term we use to describe family homelessness. According to the American Institutes for Research (Bassuk, DeCandia, Beach, & Berman, 2014), over two million children are homeless in the U.S., though the definition used to determine child homelessness is extremely broad, including children who are "doubled-up with relatives" – a definition that would include a large majority of children in kinship care. In spite of this very broad definition, other indicators suggest that homelessness among families (more narrowly defined) is rising (U.S. Interagency Council on Homelessness, 2017). Some parents, unable to care for their children due to housing concerns, might transfer their children's care to relatives either temporarily or permanently.

Related to Edwards and Ray's (Edwards & Ray, 2010) term of *desertion*, which refers to a parent's neglect of his or her child or suspension of the parental role, we suggest that other forms of maltreatment, which we term *danger*, might also be a reason for a child to be moved into the home of a relative. In this instance, danger is directly related to an allegation of physical or sexual abuse against a parent. This category includes allegations made by family members but that have not been reported to or substantiated by child protective services (CPS).

Finally, in some cases, children might express a *desire* to live with relatives, either for care and comfort, or to escape a difficult situation with parents. As children grow older and are able to express their own views, it is entirely possible that they might prefer a stable living arrangement with a relative caregiver.

Our aim in this study was to examine the characteristics of kin seeking kinship probate guardianship in a large, urban jurisdiction, and to describe the range of reasons caregivers offer for seeking guardianship. Where the Edwards and Ray (Edwards & Ray, 2010) framework or our additional four categories can be applied, we endeavor to characterize the reasons caregivers seek kinship probate guardianship for their relative children.

## **Methods**

### **Agency Setting**

The present study was conducted in partnership with a non-profit agency in a large county in a western state that offers free legal assistance to English- and Spanish-speaking caregivers seeking legal guardianship of their relative children through the probate court. This agency provides the

bulk of free legal assistance to low-income individuals who might be seeking legal guardianship in this county. Services are not means-tested and the agency does not turn away applicants who might otherwise have financial means to secure private legal services, though anecdotal evidence would suggest that the majority of applicants are low-income (B. Tsoulos,<sup>3</sup> personal communication, August 29, 2018). Before receiving services, clients complete an intake form on which they report their demographic information and reasons for seeking guardianship; the form also collects other information that was not relevant or utilized in the present study.

### **Sample**

The caregivers included in the present study represent a systematic sample of all caregivers who sought assistance through the agency's guardianship clinic between January 1, 2017 and June 5, 2017. In cases where more than one caregiver was petitioning for kinship probate guardianship (e.g. grandmother and grandfather filing jointly), the caregiver who completed the intake form was included in the study. Every other intake form was selected resulting in an initial sample of 420 petitioners. Of these, 70 were parents petitioning for visitation rights or for the termination of an existing guardianship arrangement. These parents were excluded from the analyses, resulting in a final sample of 350 caregivers.

### **Data extraction**

The information of interest was extracted on site from hard-copies of intake forms. The extracted data included demographic information about the caregivers such as gender, age, language, and educational attainment as well as information about the children in their care such as number of children in the household, age of the oldest child for whom guardianship is sought, and child welfare involvement. Child welfare involvement was recorded if a social worker placed the child with the petitioner, the child or a sibling had an open child welfare case, or the child had a voluntary placement agreement. Information about whether or not the caregiver or child received Medicaid was extracted as an indicator of socio-economic status.

### **Qualitative Data Coding**

Caregivers were asked to provide a brief account of the circumstances that led to their seeking guardianship. However, many caregivers instead reported the circumstances that led to the child being placed in their care. Although some of these responses were the same, responses were coded twice – first for the circumstance that necessitated kinship care and second for the circumstance that led to a kinship probate guardianship petition. Because mothers or fathers might be implicated in the need for relative care, or for a guardianship petition, reasons were coded separately for respondents who referred to mothers and respondents who referred to fathers. In the first round of coding, the researchers coded all of the data blind to the second coder, then examined areas of disagreement (4%), and

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<sup>3</sup> Senior Social Worker, Public Counsel.

circumstances that could not be categorized (25%). All of these data were reviewed together, discussed, and re-coded.

Coding for the circumstances that animated the need for kinship care was based on Edwards and Ray's (Edwards & Ray, 2010) classification system including the "9 D's": *divorce, desertion, drug use, death, disease, delivery, detention, deployment, or departure*. Four additional categories were created for themes that emerged from the data (described previously). These included: *destitution, danger, desire, and diversion*. In addition, definitions for some of the categories were broadened to better capture the range of circumstances described by petitioners. For example, *desertion* was expanded to include cases of parent abandonment in addition to physical neglect. An *other* category was created to capture any other circumstances as well as situations that were unclear. For example, one petitioner noted "parents unable to support child" but did not indicate what challenges the parents were facing. Responses could be coded into multiple categories. For example, cases in which parents struggle with substance abuse (*drugs*) and as a result neglect their children (*desertion*) were coded as both *drugs* and *desertion*.

The circumstances that led to a kinship probate guardianship petition were coded into categories that emerged from the data. The categories include: (1) need for medical or educational rights for the child; (2) need for public assistance; (e.g. TANF or Section 8 housing); (3) need for Co-guardianship (i.e., the proposed guardian is being added to an existing guardianship agreement); (4) contesting guardianship petition (i.e., the petitioner is contesting another individual's guardianship petition); (5) terminating an existing guardianship (i.e., the guardian is seeking to terminate their guardianship); (6) advised by county agent (i.e., the petitioner was counseled by a county agent to seek kinship probate guardianship); or (7) concern about parent re-asserting parental rights (i.e., the child is currently in the petitioner's care and the petitioner expresses concern about the parent(s) attempting to regain physical custody of the child) .

Because this study uses readily available agency information and was not designed as a research study, per se, many intake forms had missing information. Information provided below is based on the total sample (N=350) as excluding missing responses inflates the estimates.

This study was reviewed by the U.C. Berkeley Committee for the Protection of Human Subjects prior to data collection.

## **Results**

### **Caregivers**

Table 2 provides a summary of the caregivers' demographic information. Caregivers are predominantly female (85%). Although 14% of the sample did not indicate their age, among the remaining petitioners, just under half of caregivers (46%) reported their age as 50+. Grandmothers represent the largest proportion of petitioners (53%; another 3% were grandfathers requesting the petition) with aunts representing the next

largest group (17%; another 4% were uncles requesting the petition). One quarter of caregivers (25%) report using Spanish as their primary language. Almost half (45%) of caregivers are currently single: 25% never married, 5% are separated, 11% are divorced, and 4% are widowed. Over one-third (36%) have a high school diploma or less, 28% work full-time, and 25% receive Medicaid. Most caregivers report being in good to excellent health (70%).

[Table 2. Caregiver demographics here]

### **Guardianship Case**

A majority of caregivers are petitioning for legal guardianship of only one child (65%). Guardianship was contested in about ten percent of cases (11%); among contested cases, 54% were cases in which a grandmother was petitioning for guardianship and 26% a case in which an aunt was the petitioner. One third of caregivers (33%) were advised to seek legal guardianship by a county agent such as a social worker or judge. A majority of caregivers (56%) were not provided information about foster care benefits or child welfare services to which they might (or might not) be entitled. It should be noted that some caregivers who reported receiving information about public benefits also indicated that they were seeking kinship probate guardianship privately (neither social workers or judges had recommended guardianship). As a result, we calculated the percent provided information about foster care benefits from the total sample rather than from only those who appear to have been directed to guardianship as a form of kinship diversion.

[Table 3. Guardianship cases here]

### **Children**

Table 4 summarizes information about the children in the sample. Over one-third of children (36%) lived in a household that included at least one other child. This included children who might have already been living in the home of the caregiver in addition to the child(ren) for whom the petition is being filed. The average age of the oldest child for whom legal guardianship was being sought is 8.49 years ( $SD = 5.37$ ). Almost one-third (31%) of the children have involvement with the child welfare system and almost half (48%) are receiving Medicaid.

[Table 4. Child demographics here]

### **Reasons for Children's Transfer to a Relative's Home**

About one quarter of the sample did not indicate the reason the child moved in with relatives or were unclear about the reason. Among those who indicated the factors that precipitated the child's transfer into the relative's home, *desertion* was cited as the most common reason why mothers were not caring for their children, followed by *drugs* and *death*. Fathers were not

mentioned or were unknown in half of all cases. When fathers were mentioned, *desertion*, *danger*, and *drugs* were cited as the most common reasons why they were not caring for their children.

One out of four petitions indicated that the child moved in with the relative due to the mother's desertion (this was also the most frequent reason listed for fathers) (see Table 5 for a breakdown of reasons by parent). *Desertion*, as described above, included actual desertion such as "Father hasn't been around ever" and "My daughter abandoned her and we don't know where my daughter is." Other caregivers described parents who had unintentionally deserted their parental role in that they were incapacitated in their parenting abilities, or were unable to fulfill their parental role. For example, one petitioner indicated that the child entered their care because "his mother can't provide for him anymore. She sent him to live with me." Similarly, another petitioner noted, "both parents are not around or involved in his life."

Another 16% of petitioners indicated that maternal drug use, "*drugs*," was implicated. Among these cases, petitioners noted that mothers were unable to care for their children because of active drug use: "mother is on drugs" or because the mother was seeking treatment: "mother is in rehab." Drug use was often present in conjunction with another concern. For example, one petitioner indicated that their relative "uses drugs and has mental health problems" and another that the parents "both use drugs and are homeless."

Children were also transferred into the home of their relative for a variety of other reasons. A relatively small proportion of the cases included children who were transferred upon the advice of child welfare staff (*diversion*). In these cases, child welfare workers placed children in the care of relatives giving caregivers "the option to take custody" and indicating that "this would be the best way to close the case."

Another small proportion of petitioners noted that children were placed in their care because of illness (*disease*). This included both physical illness - "mother is disabled with rheumatoid arthritis" - and mental illness - "mother was hospitalized in a psychiatric facility." Lastly, a small proportion of petitioners cited the death of a parent or previous guardian as the reason for the transfer of the child into their care. For example, "child is living with me because of the passing of our mother."

[Table 5. Reasons for transfer to a relative's home here]

### **Reasons for Seeking Kinship Probate Guardianship**

A large proportion of caregivers did not give information about the circumstances that led them to pursue kinship probate guardianship (74%). Among those who did, the largest number of caregivers (15%) was motivated to seek legal guardianship to obtain medical or educational rights (see Table 6). A small number of petitioners (4%) were seeking guardianship

in order to apply for public assistance for the child (TANF, Section 8, etc.). A similarly small number of non-parent petitioners (4%) were seeking modification of a current or proposed guardianship order (i.e. adding a co-guardian, contesting guardianship, or terminating existing guardianship)

[Table 6. Reasons for seeking kinship probate guardianship here]

### **Discussion**

We systematically sampled half of all intake forms relating to caregivers who were seeking legal assistance to file a kinship probate guardianship request over a five month period in 2017 in a large county in California. We reviewed 420 petitions, 350 of which were filed by caregivers other than parents, relating to over 500 children. We have no reason to believe there is seasonality in petitions for kinship probate guardianship, though there may be. If we extrapolate these numbers to a full year, we estimate that approximately 1,680 petitions for kinship probate guardianship for over 2,414 children were sought through a large non-profit agency.<sup>4</sup> These numbers do not include petitions filed by private parties without the assistance of legal services. This county's child population represents 25% of the state's total child population. As such, we provide a rough estimate that over 8,000 children may be subject to a kinship probate guardianship petition in California, each year.

The characteristics of caregiver petitioners generally reflect the characteristics of kin caring for children in foster care, and in informal care: these caregivers are older, more likely to be single, and less educated than parents in the general population, suggesting their socioeconomic vulnerability. Findings from this study mirror those of Gleeson et al., (Gleeson et al., 2009) who examined informal caregivers' assumption of care for their relative children. Our findings suggest that children move into the homes of their relatives for a wide variety of reasons primarily including maternal desertion, drug use, death, and destitution, and paternal desertion, detention, danger, and drug use.

### **Limitations**

This study offers a limited view into an emerging caregiving arrangement for vulnerable children and families. The sample is derived from

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<sup>4</sup> The number of petitions per year is estimated as follows: 350 petitions (the number of non-parental petitions we reviewed)\*2 (the number available for review) = 700 / 5 (the number of months) = approximately 140 petitions per month (assuming no seasonality) \* 12 months = 1,680 guardianship petitions per year. The number of children for whom guardianship was being sought is estimated as: A minimum of 503 children \*2 = 1,006 / 5 (the number of months) = approximately 201.2 children per month (assuming no seasonality) = at least 2,414.4 children for whom guardianship petitions are sought per year.



a single agency in one large county in a single state and it is predominantly comprised of families seeking legal assistance who cannot pay for legal services privately. Because kinship probate guardianship courts and processes differ depending on the state (Weisz & McCormick, 2003), we anticipate that findings may not be generalizable to other jurisdictions. In spite of these limitations, we believe this is the first study available on this issue and as such offers an important benefit to the field. Moreover, the systematic sample of every other guardianship case collected over an extended period of time gives confidence that the findings can be generalized to the entire agency's services; we understand that this agency provides the large majority of all legal services supporting kinship probate guardianship in the county and as such, findings are likely generalizable to the county as a whole and are instructive to other jurisdictions.

Additionally, because the sample is predominantly comprised of those families who met the income requirements to receive free legal-services, findings are skewed towards a population without financial means. As noted previously, sparse data are collected on kinship probate guardianship so there is no way to determine the proportion of total guardianship petitions that are filed from private lawyers or from private individuals. Anecdotal evidence suggests that these cases are a minority, but further research is needed to understand the universe of guardianship filings in this and other states.

### **Implications for Practice**

As noted elsewhere, similarly situated children living with relative caregivers have access to different kinds of supports and services, depending upon their legal relationship to their caregiver (Berrick & Boyd, 2016; Berrick & Hernandez, 2016). This is in spite of the fact that typical kinship caregivers display a high degree of need for material and caregiving supports (Smithgall, DeCoursey, & Goerge, 2008; Zinn, 2009). Much of the existing literature has focused on kin children and caregivers who have selected into or been selected by state agents into state-independent or state-mandated care. Our findings extend this line of research, showing that kin caregivers seeking kinship probate guardianship – a type of state-mediated care -- have similar characteristics to kin caregivers in state-mandated and state-independent care, implying that they likely have a similarly high level of need. Unlike state-mandated care, however, these children and their caregivers qualify for few state supports or benefits. Kinship navigator programs can serve as an important source of information and resources for kinship guardians. Under the Family First Prevention Services Act of 2018, states will now have the opportunity to offer kinship navigator programs with 50% federal reimbursement (Grandfamilies.org, 2018b). We can anticipate growth among these programs in the near future with the advent of these federal funds.

To the extent that kinship probate guardianship mirrors state-independent care in that it is truly arranged as a private response to family difficulties, the modicum of services and supports available to these families

fits within the frame of overall U.S. support for families. (Whether the level of support available to U.S. families, in general, is sufficient is an entirely different matter.) Moreover, it would be inappropriate to offer informal kinship families *more* services and supports than the state offers birth families as the state has an interest in curbing incentives to transfer children from their original home to the home of a relative (Berrick, Needell, & Minkler, 1999).

In those cases where kinship probate guardianship is pursued at the behest of government agents or in lieu of foster care, however, the more public nature of kinship probate guardianship is revealed and the disparities between it and state-mandated arrangements may be troubling. In this small-scale study, about one-third of caregivers who listed a reason for pursuing guardianship indicated that a social worker or judge had encouraged their application. These instances of potential “kinship diversion” raise disquieting questions about whether caregivers should have had access to the supports and services otherwise available through the state-mandated system. In fact, they may suggest that kinship diversion should be guarded against so that vulnerable caregivers are not taken advantage of by the state.

In addition to disparities in the supports and services available to kinship families, there are also likely disparities of access to legal services that are problematic for kin. Families interested in pursuing kinship probate guardianship will find a complex process that is difficult to navigate alone. As kin caregivers pursuing kinship probate guardianship are older and less educated than parents in the general population, they may lack the legal, bureaucratic, and literacy knowledge or skills needed to navigate the application process. The choice to pursue kinship probate guardianship as a legally secure caregiving arrangement may be limited to caregivers and families who can pay for or access free legal services. This disparity calls for more wide-scale opportunities for kin caregivers to obtain legal assistance that might support court petitions for guardianship.

Finally, although the findings from this preliminary study provide some insight into caregivers’ motivations for pursuing kinship probate guardianship, questions about the mechanisms that led caregivers to this arrangement remain. How did they find out about kinship probate guardianship? What do they know about the benefits and drawbacks of this caregiving arrangement compared to other alternatives? Given the various caregiving arrangements that may be available to kin families, how do caregivers select into guardianship, and how much information and agency do they possess in making these determinations? Over half of petitioners reported that they did not receive any information about foster care or child welfare benefits. Even among families who pursued kinship probate guardianship at the advice of a county agent, very few reported receiving information about alternative arrangements. Access to information may be as important as access to other services and supports; efforts to make available and transparent information about the variety of caregiving

arrangements that are available to kin (including their attendant services and supports) may be helpful as families weigh their various options.

Parents are sometimes overwhelmed by circumstances within or outside of their control. Extreme poverty, health or mental health concerns, breakdowns in the capacity to provide care, or abuse (what we have referred to here as *destitution, disease, desertion, or danger*, respectively) can temporarily or even permanently leave children without a reliable adult caregiver. When relatives step in to assume a legally sanctioned caregiving role, that process is made easier when they have access to information and support. The limited evidence from this study offers a first glimpse into the circumstances that precipitate kinship probate guardianship. More research is needed to better understand the experiences of this vulnerable population.

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Table 1  
*Kinship Care Arrangements*

	<b>Care Arrangements</b>	<b>Government funding</b>	<b>Caregiver legal rights</b>
<b>State-mandated care</b>	Kinship foster care	TANF (AFDC-FC) or foster care subsidy	Custodial rights
	“Voluntary” placement agreement	TANF (AFDC-FC) or foster care subsidy	Custodial rights
	Kinship dependency guardianship	Guardianship subsidy	Custodial & legal rights
	Kinship adoption	Adoption subsidy	Parental rights
<b>State-mediated care</b>	Kinship diversion	TANF child-only or TANF family grants if eligible	None
	Kinship probate guardianship	TANF child-only or TANF family grants if eligible	Custodial & legal rights
<b>State-independent care</b>	Informal kinship care	TANF child-only or TANF family grants if eligible	None

Table 2  
*Caregiver Demographics*

	N	%
Gender		
Female	299	85
Male	40	12
Did not report	11	3
Age		
Under 20	2	1
20 to 29	29	8
30 to 39	36	10
40 to 49	72	21
50 to 59	106	30
60 to 69	50	14
70+	8	2
Did not report	47	14
Relationship to child(ren)		
Grandparent	195	56
Aunt/uncle	73	21
Step-parent	7	2
Sibling	24	7
Cousin	10	3
Family friend	7	2
Did not report	35	10
Primary Language		
English	200	57
Spanish	88	25
Other	1	0
Did not report	61	18
Relationship Status		
Never married	89	25
Separated	20	5
Cohabiting	7	2
Married	90	26
Divorced	37	11
Widowed	14	4
Did not report	93	27
Highest Level of Education		
8th grade or below	31	9
Some high school	37	11

but no degree		
High school degree or GED	57	16
Some college but no degree	81	23
Associate degree	15	4
Bachelor degree	14	4
Graduate degree	15	4
Did not report	125	29
Employment Status		
Employed, working 35+ hrs/wk	98	28
Employed, working 1-34 hrs/wk	38	11
Not employed, looking for work	25	7
Not employed, not looking for work	25	7
Retired	27	8
Disabled, not able to work	33	9
Did not report	104	30
Receive Medicaid		
Yes	88	25
No	166	48
Did not report	96	27
Health		
Excellent	91	26
Very good	75	22
Good	78	22
Fair	11	3
Poor	1	0
Did not report	94	27

Table 3.  
*Guardianship Cases*

	N	%
Number of children for whom guardianship is sought		
1	229	65
2	70	20

3	30	9
4	6	2
5	4	1
Did not report	11	3
Guardianship contested		
Yes	39	11
No	212	61
Did not report	99	28
Petitioner in contested case		
Grandmother	21	54
Step-parent	3	8
Aunt	10	26
Sibling	3	8
Cousin	1	3
Did not report	1	3
County advised guardianship		
Yes	116	33
No	140	40
Did not report	94	27
Provided foster care or child welfare benefit information (from any source)		
Yes	41	12
No	195	56
Did not report	114	33

Table 4  
*Child demographics*

	N	%
Number of children living in the household		
1	110	31
2	51	15
3	47	14
4	17	5
5+	7	2
Did not report	118	32
Age of oldest child		

Under 1	22	6
1 to 5	92	26
6 to 12	112	32
13+	107	31
Did not report	17	5
Child welfare involvement		
Yes	107	31
No	166	47
Did not report	77	22
Receiving Medicaid		
Yes	169	48
No	90	26
Did not report	91	26

Table 5  
*Reasons for Transfer to a Relative's Home*

	Mother		Father	
	N	%	N	%
Divorce	1	0	1	0
Desertion	84	24	37	11
Drug use	56	16	11	3
Death	38	11	9	3
Disease	20	6	7	2
Delivery	0	0	0	0
Detention	18	5	14	4
Departure	3	1	6	2
Deployment	1	0	1	0
Diversion	18	5	6	2
Destitution	26	7	10	3
Danger	19	5	13	4
Desire	5	1	5	1
Father unknown	--	--	6	2
Mother/father not mentioned	26	7	167	48
Reason provided did not mention kinship care	48	14	36	10
Did not report	39	11	39	11

Table 6  
*Reasons for Seeking Kinship Probate Guardianship*

	N	%
Medical or educational rights	51	15
Apply for public assistance	15	4
Co-guardianship	1	0
Contest guardianship petition	6	2
Terminate existing guardianship	6	2
Advised by county agent	9	3
Guardian filing petition for other reason	9	3
Did not provide a reason for kinship probate guardianship	222	63
Did not report	39	11